Mich. 507; *R. R. Co.* v. *Stout,* 17 Wall. 657. That this case is within the rule is admitted. Technically the court is right when it says the jury should have been instructed that the necessary relation between the parties must be establish by a contract express or implied, but it may be questioned whether under the circumstances of this case the omission so to instruct justified a reversal.

MASTER AND SERVANT—INJURIES TO SERVANT—FELLOW SERVANTS—FOREMAN AND WORKMAN.—Plaintiff was one of a gang of workmen engaged in loading cars from a platform about the same height as the car door and built along the side of the track. Between the platform and the floor of the car was a space of about twelve inches. Iron plates were furnished to lay across this space when needful in loading the car. A car had been shifted and the plate, at the direction of the foreman, had not been replaced. The foreman then ordered the plaintiff to take his place in front of a cask and steady it as it was rolled into the car. This necessitated plaintiff's walking backwards, and not knowing the plate had not been replaced as usual he stepped through the space and was injured. *Held,* defendant was not liable. The foreman was a fellow servant of the plaintiff, and as respects the act in question was not occupying the position of vice principal. *Baltimore & O. R. Co.* v. *Brown* (1906), — C. C. A. 3rd Circ. —, 146 Fed. Rep. 24.

Many jurisdictions adhere to the "superior servant" rule. *Little Miami Ry. Co.* v. *Stevens,* 20 Ohio 415; *Smith* v. *Wabash &c. R. Co.,* 92 Mo. 59; *Chicago etc. Co.* v. *McLallan,* 84 Ill. 109; others to the "different department" rule. *Toledo Ry. Co.* v. *O'Connor,* 77 Ill. 391; *Nashville Ry. Co.* v. *Carroll,* 6 Heisk 347; *Kentucky etc. Co.* v. *Ackley,* 87 Ky. 278. But by the weight of authority all servants are fellow servants who are under one master in the same common employment unless the "negligent servant is employed in a department so far removed from that of the injured servant that the former's negligence could not have been regarded as one of the ordinary risks of the employment." AM. & ENG. ENCY., Vol. 12, p. 975; *Baltimore* v. *Baugh,* 149 U. S. 368; *Reed* v. *Stockmeyer,* 74 Fed. 186; *Alaska* v. *Whelan,* 168 U. S. 86; *Ell* v. *N. Pac. Ry. Co.,* 1 N. Dak. 336. It is often difficult to determine whether a particular act of negligence pertains to an absolute and personal duty of the master. "It is the duty of the master to use reasonable care to furnish a safe place of employment, and to keep it in a suitable condition." *Reed* v. *Stockmeyer,* supra. Yet, when an employer has furnished a safe place and tools, and injury results to a servant from their negligent use by a fellow servant the employer will not be held responsible. In *Anthony* v. *Leeret,* 105 N. Y. 591, plaintiff fell through a trap door which was suddenly opened from below. The door was properly constructed and located, but the servant in charge opened it thus in a negligent and careless manner. The master was not held liable. *Alaska Mining Co.* v. *Whelan,* 168 U. S. 86; *N. Pac. Ry. Co.* v. *Dixon,* 194 U. S. 346; *Maher* v. *Thropp,* 59 N. J. L. 186; *Denver* v. *Sipes,* 23 Col. 226. In the principal case the place of employment would have been reasonably safe without the plates. They were furnished to facilitate the loading of the cars. The plaintiff supposed the plate was in place because it usually had been used under similar

circumstances. It was the foreman's own negligence in failing to replace it in this instance without giving warning, and was one of the ordinary risks the plaintiff had assumed.

MASTER AND SERVANT—INJURY TO SERVANT—VICE PRINCIPAL.—Brinkman was a stationary engineer in the car shops of defendant (below), working under the immediate direction of Hiscox, the chief engineer. Hiscox called him from his regular duties to another part of the works to assist him in testing a new electric motor by the explosion of which Brinkman was injured. Brinkman had no knowledge of electric motors, while Hiscox was familiar with them and knew or had reason to know the particular defect that led to the injury. *Held,* defendant was liable. The rule of fellow servants did not apply, and Brinkman had not assumed the risk. *American Car & Foundry Co.* v. *Brinkman* (1906), — C. C. A. 7th Circ. —, 146 Fed. Rep. 712.

A servant by entering and remaining in an employment assumes the risks incident thereto, of which he has actual or constructive knowledge. But if he is called temporarily from his regular duties to perform an unfamiliar task he assumes those risks only of which he has actual knowledge. *Lalor* v. *Chicago B. & Q. Ry. Co.,* 52 Ill. 401; *Brown* v. *Ann Arbor Ry. Co.,* 118 Mich. 205; *Chicago Ry. Co.* v. *Bayfield,* 37 Mich. 205. This was the situation of Brinkman in the present case. One of the positive duties of a master is to provide a reasonably safe place of employment and machinery free from defects which are discoverable by reasonable inspection. *Spicer* v. *S. Boston etc. Co.,* 138 Mass. 426; *Keegan* v. *W. Ry. Co.,* 8 N. Y. 175; *Hayes* v. *Smith,* 28 Vt. 59. A master cannot delegate a positive duty and thus escape responsibility for its performance. *Corcoran* v. *Holbrook,* 59 N. Y. 517; *Wheeler* v. *Wason Mnfg. Co.,* 135 Mass. 294; *Lafayette Bridge Co.* v. *Olsen,* 108 Fed. 335. In the principal case, therefore, as respects this particular transaction, Hiscox was a vice principal, and it is immaterial whether or not he and Brinkman were fellow servants.

MUNICIPAL CORPORATIONS—LIABILITY FOR TORT—OPERATION OF DRAWBRIDGES.—While crossing a bridge, the duty of the establishment and operation of which had been imposed upon the defendant city by statute, the plaintiff was injured by the negligent raising of the draw. In an action to recover for the injury the city was *held* liable. *Naumburg* v. *City of Milwaukee* (1906), — C. C. A. 7th Circ. —, 146 Fed. Rep. 641.

Bridges are considered as public highways, and as to the liability of the municipality for their negligent construction and operation the same rules in general apply as in the case of highways proper. ABBOTT, MUNIC. CORP., § 1024 *et seq.* As to the liability of the public corporation for negligent construction and operation of drawbridges, so far as it applies to those injured thereby while navigating the river, the cases seem in hopeless conflict. Liability was denied in the following cases: *Corning* v. *Saginaw,* 116 Mich. 74, 74 N. W. 307, 40 L. R. A. 526; *Godfrey* v. *Kings County,* 89 Hun. 18, 34 N. Y. Supp. 1052; *French* v. *Boston,* 129 Mass. 592, 37 Am. Rep. 393; *McDougall* v. *Salem,* 110 Mass. 21. On the other hand, in the following cases the muni-